

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities	)	
Siting Policies	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

**REPLY COMMENTS OF THE ILLINOIS MUNICIPAL LEAGUE**

This Reply Comment is filed by the Illinois Municipal League (“IML”) in response to the Public Notice, released December 22, 2016, in the above-entitled proceeding.

**INTRODUCTION**

The IML is a not-for-profit, non-political association of 1,258 municipalities in the State of Illinois. State statute designates it as an instrumentality of its members. 65 ILCS 5/1-8-1 (West 2014). The IML's mission is to articulate, defend, maintain and promote the interests and concerns of Illinois municipalities.

**LOCAL GOVERNMENT SITING PRACTICES DO NOT HINDER THE PROVISION OF WIRELESS SERVICE**

Mobilitie’s comments filed before the FCC claim that municipalities in Illinois and elsewhere have “imposed severe restrictions that effectively deter new infrastructure.”<sup>1</sup> Specifically, Mobilitie alleges, without providing evidence or naming specific municipalities, that cities have conditioned access to their right-of-way on Mobilitie’s waiver of its right to seek judicial review of the permitting decision.<sup>2</sup> It further alleges that a city in Illinois entered into negotiations with Mobilitie and after eleven months, negotiations failed to result in an agreement.<sup>3</sup>

If true, these baseless and anonymous claims merely highlight the fact that Mobilitie has failed to work alongside municipalities to address wireless facility siting. Alternative dispute resolution, such as arbitration and mediation, have become commonplace in Master Service Agreements as a means of reducing costs to both parties as well as decreasing the amount of time engaged in an adversarial judicial process. Mobilitie’s contention that an alternative dispute resolution clause

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<sup>1</sup> See, Comments of Mobilitie, LLC (filed March 8, 2017), at 12.

<sup>2</sup> *Id.*, at 13.

<sup>3</sup> *Id.*, at 15.

amounted to a practice that restricted small cell facility siting is an argument against the very efficiency that Mobilitie has been seeking through the FCC process.

Mobilitie's comment further mischaracterizes its action and the actions of municipalities when discussing the length of time municipalities take to review wireless facility siting applications. One of the most common causes of delay in the process of municipal review and approval of a wireless facility siting request is incomplete application materials. This is a circumstance entirely within the control of the company making the application, and one with a simple option for remedy, including pre-application dialogue or consultation with the municipality. For example, Mobilitie approached an Illinois municipality in the fall of 2015 regarding placing small cell facilities on the municipality's light poles. In June and July of 2016, the municipality and Mobilitie discussed and exchanged versions of a Master License Agreement. On November 14, 2016, the municipality and Mobilitie agreed on language for the Master License Agreement and the agreement was placed on a committee hearing agenda. Four days later, Mobilitie notified the municipality that it no longer agreed to the language and pulled out of the committee hearing. As of January 2017, negotiations on agreed language for the Master License Agreement were ongoing.

### **ILLINOIS MUNICIPALITIES HAVE WORKED WITH REPRESENTATIVES OF THE WIRELESS INDUSTRY TO CREATE A MODEL SMALL CELL WIRELESS SITING ORDINANCE**

Over the past several years, Illinois municipalities have been approached by wireless infrastructure companies, such as Mobilitie, requesting permits to install poles in the public right-of-way. While municipalities recognize the need to accommodate wireless infrastructure, they also recognize the importance of addressing the health, safety, and welfare of the public.

To aid municipalities and wireless infrastructure companies in negotiating terms that balance the protection of the public right-of-way with the needs of the wireless industry, the IML partnered with members of the wireless industry to develop a model Small Cell Antenna/Tower Right-of-Way Siting Ordinance. The model ordinance was developed as a cooperative effort between the IML and representatives of wireless industry in an effort to help facilitate the development of wireless infrastructure in Illinois while preserving municipal right-of-way, safety, and planning priorities.

The model ordinance can be tailored to the unique needs of each municipality. It imposes reasonable safeguards on the maintenance of small cell antennas and/or towers in the right-of-way while also addressing reasonable collocation and clearance requirements for the wireless industry. Furthermore, the model Small Cell Antenna/Tower Right-of-Way Siting Ordinance provides a level of consistency in agreements between wireless infrastructure companies and municipalities, while also streamlining and expediting access to the right-of-way.

While Illinois municipalities have acted in good faith to work with the wireless industry, Mobilitie has opted to discontinue negotiations and instead wait for the FCC to impose regulations on municipalities. Mobilitie's plan, according to its CEO Gary Jabara, is to impose its way of thinking on municipalities without addressing municipal needs. Those municipalities

that prefer to negotiate a mutually beneficial arrangement with Mobilitie or enter into a Master License Agreement are labeled “stupid cities around the country - really dumb.”<sup>4</sup> With negotiations foreclosed, neither municipalities nor the wireless industry benefit.

According to its CEO, Mobilitie aims not only to force cities and villages into one-sided arrangements for the use of municipalities’ right-of-way, but ultimately to gain status as a *de facto* public utility, which Mobilitie views as critical. While Jabara claims Mobilitie’s status as a public utility will “provide essential services to everybody,”<sup>5</sup> many will be unable to pay for the costs associated with the technology wireless infrastructure companies provide. Likening 5G technology to what are actually “essential services” that municipalities provide, such as water and sewer service, is beyond misguided, particularly given Mobilitie’s tacit acknowledgement that it will only provide these essential services to profitable areas. Furthermore, Mobilitie’s desire to only be *considered* a public utility, not *become* a public utility, in order to avoid exposure to additional responsibilities belies its claim to be concerned with providing anything beyond its bottom line.

## CONCLUSION

The IML thanks the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly those built in the public right-of-way. IML strongly urges the Commission to consider this reply comment, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments’ right-of-way authority.

Respectfully submitted,

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<sup>4</sup> Gary Jabara, CEO of Mobilitie, Address Before the Tower & Small Cell Summit (September 7, 2016) in AGL Magazine, March 2017, at 38.

<sup>5</sup> *Id.*, at 41.